

EXHIBIT "A"
STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 2522-s40G,
BY DOUGLAS GUNDERSON

FILMED
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FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, entered on February 28, 1975, by the Hearing Examiner, and the Stipulation agreed to by the Applicant and the attorney representing the objectors in this matter as dated on March 21, 1975, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

The Applicant's permit is granted subject to:

- (1) The objector's prior existing water rights and all other prior existing water rights.
- (2) The dam on the existing reservoir on Sage Creek should be cut so that it washes out as proposed by the Applicant, Douglas Gunderson. Such cutting down to be done before high spring runoff, so that the water released is not alkaline and will not harm downstream users. (This condition was agreed to by the Stipulation on March 21, 1975. See copy attached.)
- (3) Permanent installation of an adequate drainage device, channel, or any other necessary means to satisfy prior existing water rights.

Done this fourteenth day of April 1975.

Orin Ferris
Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 2522

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BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION

MONT. DEPT. OF NATURAL
RESOURCES & CONSERVATION

IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE)
PERMIT NO. 2522-s40G, DOUGLAS)
GUNDERSON)

STIPULATION

IT IS HEREBY STIPULATED by the applicant, Douglas Gunderson, and the objectors, Arthur Rambo, Terry Stevenson, Mike Burkhartsmeyer and Virgil Jurenka through their counsel of record that the proposal for Decision in the above entitled matter dated February 28, 1975, may be amended by changing paragraph (2) of the proposed order to read as follows:

"The dam on the existing reservoir on Sage Creek should be cut so that it washes out as proposed by the applicant, Douglas Gunderson. Such cutting down to be done before high spring runoff so that the water released is not alkaline and will not harm downstream users."

DATED this 21 day of March, 1975.

Douglas Gunderson
DOUGLAS GUNDERSON

John Warner
JOHN WARNER of Weber, Bosch, Kuhr,
Dugdale, Warner & Martin
4th Avenue, 4th Street
Havre, Montana 59501
Attorneys for Objectors Rambo, Stevenson,
Burkhartmsyer and Jurenka

CASE # 2522

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION FOR
BENEFICIAL WATER USE PERMIT NO:
2522-s40G, DOUGLAS GUNDERSON

} PROPOSAL FOR DECISION

Pursuant to the Montana Water Use and Administrative Procedure Acts, after due notice, a hearing was held on January 21, 1975 at Chester, Montana, for the purpose of hearing objections to the above-named application. The Applicant, Douglas Gunderson, appeared at the hearing and presented testimony. He was not represented by counsel. Mr. Arthur Rambo, Mr. Terry Stevenson, Mr. Mike Burkhartsmeier, and Mr. Virgil Jurenka all filed timely objections to the Application. All were represented by counsel, Mr. John Warner, Esq., of Havre, Montana. All were present at the hearing and presented testimony. Mr. Gunderson, the Applicant, offered into evidence an aerial photographic map marked as Applicant's Exhibit #1. This map was received into evidence without objection. Mr. Warner offered into evidence a map of the entire drainage area of Sage Creek marked as Objector's Exhibit #1 and a copy of a complaint of a court case in the Twelfth Judicial District in and for the County of Hill which was marked as Objector's Exhibit #2. and copies of water rights, notices, marked as Objector's Exhibit #3, which are now owned by the Objectors. All exhibits were received into evidence without objection.

PROPOSED FINDINGS OF FACT

1. On June 7, 1974, the Applicant submitted an Application for Beneficial Water Use Permit to the Department seeking to appropriate 12 acre-feet of water per annum, from an unnamed tributary to Sage Creek in Liberty County, Montana. The

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water is to be impounded in a 12-acre foot reservoir on said unnamed tributary at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T. 37 N., R. 6 E., M.P.M. and used for stockwatering and wildlife (see Item 7b5 of the application) from January 1st to December 31st, inclusive of each year.

2. On December 6, 1974, John Warner filed objections to the Application on behalf of his clients, the above-named four objectors.

3. Mr. Gunderson took the stand and testified that pursuant to an interim permit, he has already constructed this 12-acre foot reservoir on the unnamed tributary to Sage Creek. This reservoir has been constructed without a drainage device. He testified that he was forced to construct this reservoir for the reason that his existing reservoir on Sage Creek has become alkali and is unfit for stockwatering. He testified and indicated that on the map that the proposed reservoir is drained from a much smaller area and therefore stores a much smaller quantity of water than does the existing reservoir on Sage Creek. He said the existing reservoir is much larger than the proposed reservoir. He testified that because the new reservoir will indeed appropriate a much smaller quantity of water that his proposed diversion will not have adverse affects on downstream users. In fact, by releasing the water from his existing reservoir, it will provide the downstream users with more water than before. Mr. Gunderson testified that the existing reservoir on Sage Creek was constructed 25-30 years ago when his mother owned the place. Mr. Gunderson testified that he intends to cut the existing dam down and reduce the level in the reservoir so that during high spring water runoff, the alkali water will be mixed with fresh water and washed on down the creek without causing damage to the downstream appropriators. The dam would be completely washed out by this procedure.

4. Mr. Terry Stevenson testified that he owns and leases land adjacent to Sage Creek and he owns water rights appurtenant to these lands. He irrigates and

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waters stock from Sage Creek, but that since 1970 there has not been enough water for him to irrigate from Sage Creek. He testified that his grandfather homesteaded this place and that the water has been in continuous use since the time his grandfather homesteaded. Mr. Stevenson testified that there is no more available water in Sage Creek, and that any more dams would indeed adversely affect his water rights.

5. Mr. Burkhartsmeier testified that until 1970, he irrigated land with water from Sage Creek by means of dams, dikes, and ditches. He has not irrigated since 1970 because there is not near enough water in the creek. He testified that any more dams on Sage Creek would indeed adversely affect his water rights.

6. Mr. Rambo testified that he has used water for flood irrigation and stockwater up until 1970 and that he also has not had water since 1970. He testified that his water rights date back to 1898. He testified that any more dams on Sage Creek would adversely affect his existing water rights.

7. Mr. Jurenka testified that he has irrigation and stockwatering rights on Sage Creek dating back to 1908, 10, 11, and 12. He has a dam right in the creek. He last irrigated in 1972 and has not irrigated since then, although he allowed water to go on down the stream to satisfy prior appropriators. He feels that any more dams on the creek would most certainly affect him because he has a right later in time to the other objectors.

8. No testimony was introduced as to the quantity of water put to beneficial use by any of the Objectors.

PROPOSED ORDER

The Applicant's permit be granted subject to (1) the objectors' prior existing water rights and all other prior existing water rights.

(2) Cutting down the existing reservoir on Sage Creek so that its capacity is

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reduced by at least 12-acre feet. Such cutting down to be done before high Spring runoff so that the water released is not alkaline and will not harm downstream users.

(3) Permanent installation of an adequate drainage device, channel, or any other necessary means to satisfy existing water rights.

NOTICE: This is a Proposed Order and will become final when accepted by the Administrator, Water Resources Division, Department of Natural Resources and Conservation. Pursuant to Section 82-4212, R.C.M. 1947, and Rule MAC 1-1.6(2)-P6190 written exceptions to the proposed order may be filed with the Administrator within ten (10) days of service of the proposed order upon the parties herein. Upon receipt of any written exceptions, opportunity will be afforded to file briefs and make oral arguments before the Administrator.

Feb 28 1975

Date

James A. Lewis

James Lewis
Hearing Examiner